

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WELLS FARGO BANK,
Plaintiff,
v.
LEWIS CUCCIA,
Defendant.

Case No. C12-2722 JSC

ORDER REMANDING ACTION TO CONTRA COSTA SUPERIOR COURT

Plaintiff brought this state law unlawful detainer action against Defendant Lewis Cuccia in the Superior Court of California for the County of Contra Costa. Defendant, representing himself, subsequently purported to remove the action to this Court on the basis of federal question jurisdiction. Defendant alleges that “[t]he complaint presents federal questions.” (Dkt. No. 1 a 3.) In particular, he explains that “Defendants’ demurrer, a pleading depend on the determination of Defendants’ rights and Plaintiff’s duties under federal law.” (*Id.* at 4.)

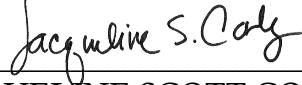
By Order filed September 10, 2012 the Court ordered Defendant to show cause why this action should not be remanded to state court based on lack of federal jurisdiction or any other basis for removal jurisdiction. The Court specifically noted that the removed complaint itself did not evidence any federal question and that Defendant's demurrer raised federal questions is irrelevant; a defendant cannot create federal subject matter jurisdiction by adding claims or

1 raising defenses. *Holmes Group, Inc. v. Vornado Air Circulation*, 535 U.S. 826, 830-31 (2002); *Federal*
2 *Nat. Mortg. Ass'n v. Sue Lin Poh*, 2012 WL 3727266 *2 (N.D. Cal. Aug. 28, 2012) (remanding
3 removed unlawful detainer action). Finally, the Court warned Defendant that his failure to
4 respond to the Order to Show Cause in writing by September 24, 2012 could result in remand for
5 lack of federal jurisdiction.

6 As of the date of this Order Defendant has not responded to the Court's Order To Show
7 Cause and has not otherwise communicated with the Court. Accordingly, for the reasons stated
8 in the Order To Show Cause (Dkt. No. 11), this action is REMANDED to the Contra Costa
9 Superior Court.¹

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11 **IT IS SO ORDERED.**

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13 Dated: Sep. 27, 2012

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16 JACQUELINE SCOTT CORLEY
17 UNITED STATES MAGISTRATE JUDGE
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¹ Pursuant to 28 U.S.C. section 636(c) both Plaintiff and Defendant consented to the jurisdiction
of a Magistrate Judge. (Dkt. Nos. 4, 7.)